OPERATION OF VEHICLE UNDER THE INFLUENCE

39A:DWI-1. Operating motor vehicle with controlled dangerous substance or prescription legend drug in possession or in vehicle

   a. A person shall not operate a motor vehicle on a highway while knowingly having in possession or in the motor vehicle a controlled dangerous substance as classified in Schedules I, II, III, IV and V of the "New Jersey Controlled Dangerous Substances Act," 24:21-1 et seq. or any prescription legend drug, unless the person has obtained the substance or drug from, or on a valid written prescription of, a duly licensed physician, veterinarian, dentist or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals or unless the person possesses a controlled dangerous substance pursuant to a lawful order of a practitioner or lawfully possesses a Schedule V substance.

   b. Violation of this section is a class C offense. A person convicted of this violation shall forfeit the right to operate a motor vehicle for a period of two years from the date of conviction.

   c. This section shall not apply to a duly licensed physician, dentist, registered pharmacist, veterinarian, nurse, podiatrist, intern or resident physician of a hospital, sanitarium or other medical institution; or to a hospital, sanitarium, clinical laboratory or any other medical institution; or to a State or governmental agency; or to any manufacturer, wholesaler, retailer or regular dealer in drugs.

   d. This section shall not apply to common carriers or warehousemen while engaged in lawfully transporting or storing such drugs or to any employee acting within the scope of employment; or to public officers or employees in the performance of their official duties requiring possession or control of these drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession; or to persons whose possession is for the purpose of aiding public officers in performing their official duties.

Source: 39:4-49.1; 39:4-49.2; 39:4-49.3.

COMMENT
This section contains the substance of the source sections, but consolidates three of those sections.

Subsection b designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class D to class C by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:DWI-2. Driving while intoxicated

   a. Except as provided in subsection (q), a person shall be subject to the consequences set forth in this section if that person:

      (1) Operates a motor vehicle under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or
(2) Operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood, or

(3) Permits another person under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by or in custody or control of the first person or

(4) Permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more.

b. As used in this section, "narcotic, hallucinogenic or habit-producing drug" includes an inhalant or other substance containing a chemical capable of releasing toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as glue, cement or any other substance containing one or more of the following: acetone and acetate; amyl nitrite or amyl nitrate or their isomers; benzene; butyl alcohol; butyl nitrite, butyl nitrate or their isomers; ethyl acetate; ethyl alcohol; ethyl nitrite or ethyl nitrate; ethylene dichloride; isobutyl alcohol or isopropyl alcohol; methyl alcohol; methyl ethyl ketone; nitrous oxide; n-propyl alcohol; pentachlorophenol; petroleum ether; propyl nitrite or propyl nitrate or their isomers; toluene, toluol; or xylene or any chemical substance capable of causing intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of the chemical substance.

c. When the operator of a motor vehicle is involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

d. For the first offense a person shall:

(1) Pay a fine between $250 and $400, forfeit the privilege to operate a motor vehicle on the highways of this State for three months, be detained for between 12 and 48 hours during two consecutive days for not less than six hours each day and serve according to the program requirements of the Intoxicated Driver Resource Centers ("IDRCs") and, in the discretion of the court, be imprisoned for not more than 30 days. These consequences apply if: the person's blood alcohol concentration is at least 0.08% but less than 0.10%; or the person operates a motor vehicle while under the influence of intoxicating liquor; or the person permits another person under the influence of intoxicating liquor to operate a motor vehicle owned by him or in his custody or control or permits another person with a blood alcohol concentration of at least 0.08% but less than 0.10% to operate a motor vehicle;

(2) Pay a fine between $300 and $500, forfeit the privilege to operate a motor vehicle on the highways of this State for a period between seven months and one year, be detained for between 12 and 48 hours during two consecutive days for not less than six hours each day and serve according to the program requirements of the IDRCs and, in the discretion of the court, be imprisoned for not more than 30 days. These consequences apply if: the person's blood alcohol concentration is 0.10% or higher; or the person operates a motor vehicle while
under the influence of narcotic, hallucinogenic or habit-producing drug; or the person permits another person who is under the influence of narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by, or in the first person’s custody or control; or permits another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle.

(3) The provisions of 39:4-50.16 et al.

e. For a second offense, a person shall:

(1) Pay a fine between $500 and $1,000, forfeit the privilege to operate a motor vehicle on the highways of this State for a period of two years, and, after the expiration of that period, may make application to the Commissioner for a driver’s license, which may be granted at the discretion of the Commissioner; be ordered by the court to perform community service for 30 days, the form and terms of which are in the discretion of court, and be imprisoned for a term between 48 consecutive hours and 90 days, which shall not be suspended or served on probation.

(2) Install an ignition interlock device under 39:4-50.16 et al. or have the registration certificate and license plates revoked for two years under 39:3-40.1.

f. For a third or subsequent offense, a person shall:

(1) Pay a fine of $1,000, forfeit the privilege to operate a motor vehicle on the highways of this State for 10 years beginning at the conclusion of any term of imprisonment, be imprisoned for not less than 180 days in a county jail or workhouse, except that the court may lower the term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the IDRC.

(2) Install an ignition interlock device under 39:4-50.16 et al. or have the registration certificate and license plates revoked for 10 years under 39:3-40.1.

g. A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact, shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

h. If the driving privilege of a person is under revocation or suspension in New Jersey for a violation of any provision of Title 39 or Title 2C at the time of a conviction for a violation of this section, the revocation or suspension period imposed under this section shall commence on the date the existing revocation or suspension period concludes. If a person is less than 17 at the time of the imposition of sentence, the forfeiture, suspension or revocation imposed by this section shall commence immediately, run through the offender's 17th birthday and continue for the period set by this section. A court that imposes a term of imprisonment for a first or second offense under this section may sentence the defendant to: the county jail, the county workhouse, an inpatient rehabilitation program, an IDRC or to another facility approved by the Chief
of the Intoxicated Driving Program Unit. For a third or subsequent offense a person may not serve a term of imprisonment at an IDRC.

i. A person convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint in order to render that person liable to the punishment imposed on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

j. A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the IDRCs and a program of alcohol and drug education and highway safety, as prescribed by the Chief Administrator. The sentencing court shall inform a person convicted that failure to satisfy the requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until the requirements are satisfied, unless stayed by court order pursuant to the Court Rules or 39:5-22. Upon sentencing, the court shall forward to the Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of $100 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to 26:2B-32 to support the Intoxicated Driving Program Unit.

k. Upon conviction of a violation of this section, the court shall immediately collect the New Jersey driver's license(s) of the person convicted and forward them to the Commissioner. The court shall inform the person convicted, orally and in writing, that if that person is convicted of personally operating a motor vehicle during a period of license suspension imposed pursuant to this section, the person shall be subject to the penalties established in 39:3-40. The person shall be required to acknowledge receipt of the written notification in writing. Failure to receive a written notice, or to acknowledge the receipt of a written notice, shall not be a defense to a subsequent charge of a violation of 39:3-40. If a person convicted under this section holds an out-of-State driver's license, the court shall not collect that license but shall notify the Commissioner, who shall notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's privilege to operate a motor vehicle in this State.

l. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation. The person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice, or to acknowledge receipt of a written notice, shall not be a defense to a subsequent charge of a violation of this section.

m. The Commissioner shall promulgate regulations pursuant to the "Administrative Procedure Act," to establish a program of alcohol education and highway safety.

n. A person accused of a violation of this section liable to punishment as a second or subsequent offender is entitled to the same rights of discovery as allowed defendants pursuant to the Court Rules.
o. The counties, in cooperation with the Division of Alcoholism and Drug Abuse ("DADA") and the Commission, and subject to the approval of the DADA, shall designate and establish, on a county or regional basis, IDRCs. These Centers shall have the capability of serving as community treatment referral centers and monitors of a person's compliance with court ordered treatment, service alternative or community service. Centers shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. Centers shall develop individualized treatment plans for all persons attending. The duration of any ordered treatment or referral shall not exceed one year. Centers shall establish networks with community alcohol and drug education, treatment and rehabilitation resources and receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing shall bar Centers from developing their own education and treatment programs which must be approved by the DADA.

p. Upon a person's failure to report to the initial screening or any subsequent ordered referral, the IDRC shall promptly notify the sentencing court of the person's failure to comply. Required detention periods at the IDRCs shall be determined by the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an IDRC, a person shall be required to pay a per diem fee of $75 for the first offender program or $100 for the second offender program. Any increases in the per diem fees shall be determined pursuant to regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act". Centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the Commissioner. The Commissioner of Health and Senior Services shall adopt regulations pursuant to the "Administrative Procedure Act" to effectuate this subsection.

q. When a violation of this section occurs while:

1. On property used for school purposes owned by or leased to an elementary or secondary school or school board, or within 1,000 feet of such property;
2. Driving through a school crossing as defined in 39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or
3. Driving through a school crossing as defined in 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution,

The convicted person shall be subject to the following penalties and a period of license suspension shall commence upon the completion of any prison sentence imposed:

1. For a first offense, be fined between $500 and $800, be imprisoned for not more than 60 days and have the person’s driver’s license suspended for a period between one and two years;
2. For a second offense, be fined between $1,000 and $2,000, perform community service for 60 days, be imprisoned between 96 consecutive hours,
which shall not be suspended or served on probation, and 180 days, except that the court may lower the term for each day, up to 90 days, served performing community service as the court deems appropriate, and have the person’s driver’s license suspended for a period of four years; and,

(3) For a third offense, be fined $2,000, imprisoned for 180 days in a county jail or workhouse, except that the court may lower the term for each day, up to 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the IDRC, and have the person’s driver’s license suspended for a period of 20 years.

r. A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes owned by or leased to any elementary or secondary school or school board produced pursuant to C. 2C:35-7 may be used in a prosecution under subsection (q). It shall not be relevant to the imposition of sentence pursuant to subsection (q) that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing, nor shall it be relevant that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

s. A court also may order a person convicted pursuant to subsection (a) to participate in a supervised visitation program as either a condition of probation or a form of community service, giving preference to those under the age of 21 at the time of the offense. Prior to ordering a person to participate in such a program, the court may consult with any person who may provide useful information on the defendant's physical, emotional and mental suitability for the visit to ensure that it will not cause any injury to the defendant. The court also may order that the defendant participate in a counseling session under the supervision of the IDRC prior to participating in the supervised visitation program. The supervised visitation program shall be at one or more of the following facilities which have agreed to participate in the program under the supervision of the facility's personnel and the probation department:

(1) A trauma center, critical care center or acute care hospital having basic emergency services, which receives victims of motor vehicle accidents for the purpose of observing appropriate victims of drunk drivers and victims who are, themselves, drunk drivers;

(2) A facility which cares for advanced alcoholics or drug abusers, to observe persons in the advanced stages of alcoholism or drug abuse; or

(3) If approved by a county medical examiner, the office of the county medical examiner or a public morgue to observe appropriate victims of vehicle accidents involving drunk drivers.

t. As used in subsection (s), "appropriate victim" means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant. If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine
that the visitation may be or is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents, to discuss the visitation and its effect on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage. The Supreme Court may adopt court rules or directives to effectuate the purposes of this subsection.

u. In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of $100, of which amount $50 shall be payable to the municipality in which the conviction was obtained and $50 to the Treasurer of the State of New Jersey for deposit into the General Fund.

v. A parent or guardian who is convicted of a violation of this section and who, at the time of the violation, has a minor as a passenger in the motor vehicle is guilty of a disorderly persons offense. "Parent or guardian", means a natural parent, adoptive parent, resource family parent, stepparent, or any person temporarily responsible for the care, custody or control of a minor or upon whom there is a legal duty for such care, custody or control. "Minor" means a person who is 17 years of age or younger. In addition to the penalties otherwise prescribed by law, a person who is convicted under this subsection shall forfeit the privilege to operate a motor vehicle over the highways of this State for a period not exceeding six months and shall be ordered to perform community service for a period of not more than five days.

w. A person convicted of a first or second violation of this section and imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not, after commitment, be released until the term of imprisonment imposed has been served. A person imprisoned in the county jail or workhouse may in the discretion of the court, be released on a work release program. No warden or officer having custody of the county jail or workhouse shall release a person so committed, unless the person has been released by the court on a work release program, until the sentence has been served. A person sentenced to an inpatient rehabilitation program may, upon petition by the treating agency, be released by the court to an outpatient rehabilitation program for the duration of the original sentence. Nothing in this subsection shall be construed to interfere in any way with the operation of a writ of habeas corpus, a proceeding in lieu of the prerogative writs, or an appeal. The Commissioner shall adopt regulations deemed necessary to effectuate the provisions of this subsection.

COMMENT

This section contains the substance of the original sections. Original section 39:4-50 contains the bulk of the provisions pertaining to driving while intoxicated. The original section is approximately seven pages long and does not contain letters or numbers for all of the paragraphs that it contains, making it unnecessarily confusing to use and to reference. No substantive changes were made to the text of that section, but the language was rearranged to include numbers or letters for each paragraph, unlike the source section.

The text of the original section 39:4-50.15, which contained additional definitions, was included as subsection (v). The text of the original section 39:4-51, which dealt with sentencing, was included here as subsection (w). The language in subsections d, e, and f were edited.

39A:DWI-3. Samples of breath

a. A person who operates a motor vehicle on any public highway or quasi-public area in this State shall be deemed to have given consent to the taking of samples of that person’s breath for the purpose of making chemical tests to determine the content of alcohol in that person’s blood if the taking of samples is made in accordance with the provisions of this chapter and at the request of a police officer with reasonable grounds to believe that the person has been operating a motor vehicle in violation of the provisions of 39:4-50.

b. A record of the taking of any such sample, disclosing the date, time and result of any chemical test, shall be made and a copy furnished or made available to the person so tested on request of that person.

c. In addition to the samples taken and tests made at the direction of a police officer, a person tested shall be permitted to have such samples taken and chemical tests of that person’s breath, urine or blood made by a person or physician selected by the person tested.

d. A police officer shall inform the person tested of his or her rights under subsections (b) and (c).

e. No chemical test or specimen necessary thereto, may be made or taken forcibly and against physical resistance by the person sought to be tested. A police officer shall inform a person arrested of the consequences of refusing to submit to such test. A standard statement, prepared by the Commissioner, shall be read by the police officer to the person under arrest.

Source: 39:4-50.2.

COMMENT

This section contains the substance of the original.

39ADWI-4. Refusal to submit to chemical test

a. Except as provided in subsection (b), a municipal court shall revoke the driver’s license of any individual who, after being arrested for a violation of 39:4-50, refuses to submit to a test provided for in 39:4-50.2 when requested to do so. The revocation shall be for a period of:

(1) Between seven months and one year for a first offense;
(2) Two years for a second offense; and
(3) Ten years for a third or subsequent offense.

b. A conviction or administrative determination of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to 39:5D-1 et seq., shall constitute a prior conviction under this section.

c. A municipal court shall determine by a preponderance of the evidence whether:

(1) The arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana;

(2) The person was placed under arrest, if appropriate; and

(3) The person refused to submit to the test upon request of the officer.

d. If the elements of the violation set forth in subsection (c) are not established, no conviction shall issue.

e. In addition to any other requirements provided by law, a person whose driver’s license is revoked for refusing to submit to a test shall be referred to an IDRC and shall satisfy the Center’s requirements for refusal to submit to a test as provided for in 39:4-50.2 or be subject to the penalties imposed for failure to do so. For a first offense, the revocation may be concurrent with or consecutive to any revocation imposed for a conviction under 39:4-50 arising out of the same incident. For a second or subsequent offense, the revocation shall be consecutive to any revocation imposed for a conviction under 39:4-50. In addition to issuing a revocation, except as provided in subsection (f), the municipal court shall fine a person convicted under this section between $300 and $500 for a first offense, between $500 and $1,000 for a second offense; and a fine of $1,000 for a third or subsequent offense.

f. If a violation occurs under the following circumstances, the penalty for a first offense shall be a fine between $600 and $1,000 and a license suspension between one and two years; for a second offense, a fine between $1,000 and $2,000 and a license suspension for four years; and for a third or subsequent offense, a fine of $2,000 and a license suspension for a period of 20 years:

(1) A violation on any property used for school purposes owned by or leased to an elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) A violation while driving through a school crossing as defined in 39:1-1 if the municipality, by ordinance or resolution, designated the school crossing as such; or

(3) A violation while driving through a school crossing as defined in 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.
g. A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes owned by or leased to an elementary or secondary school or school board produced pursuant to 2C:35-7 may be used in a prosecution under this section. It shall not be relevant to the imposition of sentence pursuant to subsection (f) that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing, nor shall it be relevant that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

Source: 39:4-50.4a.

COMMENT

This section contains the substance of the original. This section has been held unconstitutional in the case of State v. Cummings, 184 N.J. 84, 875 A.2d 906 (2005) – the statutory language is effective until February 29, 2008.

39A:DWI-5. Surcharges

a. Upon a conviction of a violation of 39:4-50 or 39:4-50.4a, the court shall collect from the defendant a surcharge of $100 in addition to any fine imposed on that defendant. The court shall forward the surcharge to the Commissioner of the Division of Motor Vehicles who shall deposit $95 of the surcharge into a "Drunk Driving Enforcement Fund" ("Fund"). This Fund shall be used to establish a statewide drunk driving enforcement program supervised by the Commissioner. The remaining $5 shall be deposited by the Commissioner into a separate fund for administrative expenses.

b. A municipality shall be entitled to periodic grants from the Fund in amounts representing its proportionate contribution to the fund. A municipality shall be deemed to have contributed the portion of the surcharge allocated to the Fund if the violation occurred within the municipality and the arrest resulting in conviction was made by the member of a municipal police force. The Division of State Police, interstate law enforcement agencies and county law enforcement agencies shall be entitled to periodic grants from the Fund in amounts representing their proportionate contributions to the Fund. Those entities shall be deemed to have contributed to the fund the portion of the surcharge allocated to the Fund if the arrest resulting in a conviction was made by a member of the particular enforcement agency. Grants from the Fund shall be used by law enforcement entities to increase enforcement of 39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the Commissioner.

c. The surcharge described herein shall not be considered a fine, penalty or forfeiture to be distributed pursuant to 39:5-41.

Source: 39:4-50.8.

COMMENT

This section contains the substance of the original.
39A:DWI-6. Uniform enforcement and analysis

a. To promote the uniform enforcement of 39:4-50 and 39:4-50.2, the Attorney General shall promulgate guidelines concerning the prosecution of such violations, which shall be disseminated to county and municipal prosecutors.

b. To be considered valid under this chapter, chemical analyses of an arrested person's breath shall be performed according to methods approved by the Attorney General, and by a person certified for this purpose by the Attorney General. The Attorney General is authorized to approve satisfactory methods, to ascertain the qualifications of individuals to conduct such analyses, and to make certifications of such individuals, which certifications are subject to termination or revocation at the discretion of the Attorney General.

c. The Attorney General shall prescribe a uniform form for reports of chemical analysis of breath to be used by law enforcement officers and others acting in accordance with the provisions of this chapter. The forms shall be sequentially numbered. Each individual or entity having control of a police department, in the case of forms distributed in a municipality, and the Commissioner and the Superintendent of State Police, in the case of forms distributed to law enforcement officers and other personnel in their divisions, shall be responsible for the furnishing and disposition of the forms. Each responsible party shall cause to be prepared records and reports relating to the forms and their disposition in such manner and at such times as the Attorney General shall prescribe.

d. If any provision or application of this chapter is found invalid, the invalid portion shall be deemed severable and such invalidity shall not affect other provisions or applications.

Source: 39:4-50.2a; 39:4-50.3; 39:4-50.5.

COMMENT
This section contains the substance of the original sections, but consolidates them.

39A:DWI-7. Drunk Driving Victim’s Bill of Rights

a. For purposes of this section, "victim" means, unless otherwise indicated, a person who suffers personal physical or psychological injury or death, or incurs loss of or injury to personal or real property, as a result of a motor vehicle accident involving another person driving while under the influence of drugs or alcohol. In the event of a death, "victim" means the surviving spouse, a child or the next of kin.

b. Victims shall have the right to:

(1) Make statements to law enforcement officers regarding the facts of the motor vehicle accident;

(2) Reasonable use of a telephone;

(3) Receive medical assistance for injuries resulting from the accident;

(4) Contact the investigating officer and see copies of the accident and autopsy reports;
(5) Be provided by the court, upon the written request of the victim, with:

   (A) Information about their role in the court process;

   (B) Timely advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;

   (C) Timely notification of the case disposition, including the trial and sentencing;

   (D) Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody; and

   (E) Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant;

(6) Receive, when requested from any law enforcement agency involved with the offense, assistance in obtaining employer cooperation in minimizing loss of pay and other benefits resulting from their participation in the court process;

(7) A secure waiting area, after the motor vehicle accident, during investigations, and prior to a court appearance;

(8) Submit to the court adjudicating the offense a written or oral statement to be considered in deciding upon sentencing and probation terms. This statement may include the nature and extent of any physical, psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the effect of the offense upon the victim's family.

(9) Consult with the prosecutor prior to dismissal of the case or the filing of a proposed plea negotiation with the court, if the victim sustained bodily injury or serious bodily injury as defined in 2C:11-1. This subsection shall not alter or limit the authority or discretion of the prosecutor to enter into any plea agreement which the prosecutor deems appropriate.

(10) When a need is demonstrated, the information in this section shall be provided in Spanish as well as English.

c. Nothing contained in this section shall mitigate any right a victim may have pursuant to the "New Jersey Tort Claims Act", 59:1-1 et seq.


COMMENT
This section contains the substance of the original sections, but consolidates them.

39A:DWI-8. Operation of vehicle by person who has consumed alcohol but is under the legal age to drink

a. A person under the legal age to purchase alcoholic beverages who operates a motor vehicle with a blood alcohol concentration of 0.01% or more, but less than 0.08%, by weight of alcohol in the person’s blood, shall forfeit the driving privilege in this State
or be prohibited from obtaining a New Jersey driver’s license for a period between 30 and 90 days beginning on the date the person becomes eligible to obtain a license or on the day of conviction, whichever is later, and shall perform community service for between 15 and 30 days. In addition, the person shall satisfy the program and fee requirements of an IDRC or participate in a program of alcohol education and highway safety as prescribed by the Commissioner.

b. The penalties provided under this section shall be in addition to the penalties the court may impose under 2C:33-15, 33:1-81, 39:4-50 or any other law.


COMMENT

This section contains the substance of the original.

39A:DWI-9. Ignition interlock devices as alternative penalties

a. In sentencing an offender under 39:4-50, the court may order, in addition to any other penalty imposed by that section, the installation of an interlock device in every motor vehicle owned, leased or regularly operated by the offender following the expiration of the period of license suspension imposed under that section. The device shall remain installed for a period commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served as follows:

(1) For a first offender, a period between six months and one year; and
(2) For a second or subsequent offender, a period between one and three years.

b. The court shall require that, for the duration of its order, an offender shall drive no vehicle other than one in which an interlock device has been installed pursuant to the order.

c. As used in this section, "ignition interlock device" or "device" means a blood alcohol equivalence measuring device which will prevent a motor vehicle from starting if the operator's blood alcohol content exceeds a predetermined level when the operator blows into the device.

d. The court shall notify the Director of the Division of Motor Vehicles when a person has been ordered to install an interlock device in a vehicle owned, leased or regularly operated by the person. The Division shall require that the device be installed before reinstatement of the person's driver's license that has been suspended pursuant to 39:4-50. The Division shall imprint a notation on the driver's license stating that the person shall not operate a motor vehicle unless it is equipped with an interlock device and shall enter this requirement in the person's driving record.

e. A person who fails to install an interlock device ordered by the court in a motor vehicle owned, leased or regularly operated by him shall have that person’s driver's license suspended for one year, in addition to any other suspension or revocation imposed under 39:4-50, unless the court determines a valid reason exists for the failure to comply. A person in whose vehicle an interlock device is installed pursuant to a court order who
drives that vehicle after it has been started by any means other than that person’s own blowing into the device or who drives a vehicle not equipped with a device shall have that person’s driver's license suspended for one year, in addition to any other penalty applicable by law.

f. A person is a disorderly person who:

   (1) Blows into an interlock device or otherwise starts a motor vehicle equipped with such a device for the purpose of providing an operable motor vehicle to a person who has been ordered by the court to install the device in the vehicle.

   (2) Tampers or in any way circumvents the operation of an interlock device.

   (3) Knowingly rents, leases or lends a motor vehicle not equipped with an interlock device to a person who has been ordered by the court to install an interlock device in a vehicle he owns, leases or regularly operates.

g. The Director shall certify or cause to be certified ignition interlock devices required by this act and shall publish a list of approved devices. A device shall not be certified unless the manufacturer enters into an agreement with the Division for the provision of devices to indigent offenders, as determined by the Director, at a reduced cost. The Director shall provide a copy of this list along with information on the purpose and proper use of interlock devices to persons who have been ordered by the court to install such a device in their vehicles.

h. Pursuant to the "Administrative Procedure Act", the Division shall promulgate regulations for the installation and use of ignition interlock devices. These regulations shall be consistent with the federal model specifications for ignition interlock devices issued by the National Highway Traffic Safety Administration including the following:

   (1) Requiring that the ignition interlock system selected shall:

       (A) Not impede the safe operation of the vehicle;

       (B) Incorporate features that make circumvention difficult and that do not interfere with the normal use of the vehicle;

       (C) Correlate closely with established measures of alcohol impairment;

       (D) Operate accurately and reliably in an unsupervised environment;

       (E) Resist tampering and give evidence when tampering is attempted;

       (F) Be difficult to circumvent and require premeditation to do so;

       (G) Require a deep lung breath sample as a measure of blood alcohol concentration equivalence;

       (H) Operate reliably over the range of automobile environments; and
(I) Be manufactured by a party who will provide liability insurance.

(2) Designating the facilities where ignition interlock devices may be installed;

(3) Establishing guidelines for the proper use of ignition interlock devices; and

(4) Establishing guidelines for the provision of ignition interlock devices at reduced rates to persons who, according to standards specified by the division, qualify as indigent.

i. The Director may adopt, in whole or in part, the guidelines, rules, regulations, studies, or independent laboratory tests performed on and relied upon in the certification of ignition interlock devices by other states, their agencies or commissions.


COMMENT

This section contains the substance of the original sections, but consolidates them.

39A:DWI-10. Criminal and civil liability for facilitating operation of vehicle

a. When a person is summoned by or on behalf of a person who has been arrested for a violation of 39:4-50 or 39:4-50.4a in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising of the potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment.

b. The Attorney General shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies and may issue directives to ensure the uniform implementation of this section. Nothing in this subsection shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

Source: 39:4-50.22.

COMMENT

This section contains the substance of the original, but restructures the language and adds paragraph identification.


a. When a person has been arrested for a violation of 39:4-50 or 39:4-50.4a, the arresting law enforcement agency shall impound the vehicle the person was operating at the time of arrest.
b. A vehicle impounded pursuant to this section shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in subsection (d).

c. A vehicle impounded pursuant to this section may be released to a person other than the arrestee prior to the end of the impoundment period only if:

   (1) The vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in subsection (d); or

   (2) The vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement required in 39:4-50a, to operate the vehicle and the conditions for release in subsection (d) are met.

d. A vehicle impounded pursuant to this section shall not be released unless the person claiming the vehicle:

   (1) Presents a valid operator's license, proof of ownership or lawful authority to operate the motor vehicle, and proof of valid motor vehicle insurance for that vehicle;

   (2) Is able to operate the vehicle in a safe manner and would not be in violation of Title 39; and

   (3) Meets any other conditions for release established by the law enforcement agency.

e. A law enforcement agency impounding a vehicle pursuant to this section may charge a reasonable fee for towing and storage of the vehicle. The law enforcement agency may retain custody of the vehicle until that fee is paid.

Source: 39:4-50.23.

COMMENT
This section contains the substance of the original.

39A:DWI-12. Consumption of alcoholic beverage by driver or passenger

   a. A person shall not consume an alcoholic beverage while operating a motor vehicle. A passenger in a motor vehicle shall not consume an alcoholic beverage while the motor vehicle is being operated. This subsection shall not apply to a passenger of a charter or special bus operated as defined under 48:4-1 or a limousine service.

   b. A person shall be presumed to have consumed an alcoholic beverage in violation of this section if an open or unsealed container of an alcoholic beverage is located in the passenger compartment of the motor vehicle, the contents of the alcoholic beverage have been partially consumed and the physical appearance or conduct of the operator of the motor vehicle or a passenger may be associated with the consumption of an alcoholic beverage. For the purposes of this section, the term "open or unsealed" shall mean a container with its original seal broken or a container such as a glass or cup.
c. Violation of this section is a class C offense. A person convicted of first violation of this section shall be informed by the court of the penalties for a subsequent violation. Imprisonment or community service penalties shall not be imposed for the first offense, but may be imposed for the subsequent offense.

Source: 39:4-51a.

COMMENT

This section contains the substance of the original.

Subsection c designates penalty according to the new penalty classification system contained in 39A:44-GP1. Language was added to subsection c to preserve the distinction between first and subsequent offenses.

39A:DWI-13. Open alcoholic beverage container

a. All occupants of a motor vehicle located on a public highway, or the right-of-way of a public highway, are prohibited from possessing an open or unsealed alcoholic beverage container. This subsection shall not apply to a passenger of a charter or special bus operated as defined under 48:4-1 or a limousine service. For the purposes of this section, the term "open or unsealed" shall mean a container with its original seal broken or a container such as a glass or cup.

b. A person shall not be deemed to be in possession of an opened or unsealed alcoholic beverage container if the container is located in the trunk of a motor vehicle, behind the last upright seat in a trunkless vehicle, or in the living quarters of a motor home or house trailer.

c. Violation of this section is a class C offense. A person convicted of first violation of this section shall be informed by the court of the penalties for a subsequent violation. Imprisonment or community service penalties shall not be imposed for the first offense, but may be imposed for the subsequent offense.

Source: 39:4-51b.

COMMENT

This section contains the substance of the original.

Subsection c designates penalty according to the new penalty classification system contained in 39A:44-GP1. Language was added to subsection c to preserve the distinction between first and subsequent offenses.